

To the Mayor and Members of the City Council

February 16, 2016

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SUBJECT: PENALTIES RELATED TO HOTEL OCCUPANCY TAX REPORTING

Rental of hotel/motel rooms in the City of Fort Worth is subject to hotel occupancy tax at both the state and city level. This report provides an overview of the laws that impose hotel occupancy taxes, the City's process for accepting reports and remitted taxes, and our process for ensuring compliance with the laws.

Laws Imposing Hotel Occupancy Tax

State hotel occupancy tax is imposed and regulated by Chapter 156 of the Texas Tax Code. Hotel/motel operators are required to collect the tax on the state's behalf; to maintain information regarding the imposition of the tax; and to submit reports and remit collected taxes to the Texas Comptroller of Public Accounts. Hotel/motel operators who do not comply with all state law requirements are subject to the possibility of both criminal and civil penalties.

Chapter 351 of the Texas Tax Code authorizes cities to impose a municipal hotel occupancy tax. Each city that wishes to impose the tax adopts its own local ordinance. The Fort Worth ordinance is found in Chapter 32, Article II of the City Code and was most recently revised in November of 2012. Consistent with the state tax, hotel/motel operators are required to collect the tax on the City's behalf; to maintain information regarding the imposition of the tax; and to submit reports and remit collected taxes to the City. Those operators are similarly subject to criminal and civil penalties for failure to comply with all applicable requirements.

Violations and Penalties

The following chart compares the approach to enforcement under each set of applicable laws.

State Hotel Occupancy Tax (Ch 156 TX. Tax Code)	Local Ordinance (Ch 32, Art. II)
<u>TAX RATE</u> – 6%	<u>TAX RATE</u> – 9% (All revenue from rate greater than 7% is dedicated to (i) expansion of existing convention center facility or (ii) “qualified project” such as Multipurpose Arena)
<u>CIVIL PENALTY</u>	<u>CIVIL PENALTY</u>
<u>Failure to pay when due</u> – (i) 5% of tax due (min. \$1); plus (ii) if not paid within 30 days, add'l 5% of tax due (min. \$1)	<u>Failure to timely remit or report</u> – (i) 15% of total tax owed
<u>Failure to report</u> – (i) 5% of tax due (min. \$1) plus (ii) \$50	<u>Failure to remit or report</u> – If balance is more than 90 days past due, City can bring suit to enjoin hotel operations until tax is remitted or report is filed. City can recover:
<u>Failing to pay or report when due as a result of fraud or intent to evade</u> – Add'l penalty of 50% of tax due	<ul style="list-style-type: none"> - Attorney's fees - Costs of audit IF certain conditions met - 15% of tax owed IF at least one quarter late - Interest

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<u>CRIMINAL PENALTY</u>	<u>CRIMINAL PENALTY</u>
<u>Failure to Collect</u> <u>Failure to Pay to Comptroller</u> <u>Failure to Report</u> Each offense is a misdemeanor, fine of \$100-\$1,000 <u>Tampering with Governmental Record (Penal Code §37.10),</u> Ranges from Class C misdemeanor to 2d Degree Felony	<u>Fail to Collect</u> <u>Fail to Remit taxes to City when due</u> <u>Fail to Report when due</u> <u>File False Report</u> Each offense is a misdemeanor, fine of up to \$500; each day a violation continues is considered a separate offense

The City's ordinance incorporates enforcement mechanisms that generally mirror those found in state law. In addition, staff reviewed the hotel occupancy tax ordinances of the following Texas cities: Arlington, Austin, Dallas, El Paso, Houston, Irving, San Antonio, and Waco, and determined that the enforcement mechanisms found in the City Code are comparable to those of the listed cities.

The state laws governing hotel occupancy tax do not contain a specific provision on the topic of falsifying or concealing required tax records. However, if that type of activity were suspected, the case would be submitted to the appropriate district attorney's office for criminal prosecution under applicable Penal Code provisions, including, but not limited to, Section 37.10.

Collection of Hotel Occupancy Taxes

The Financial Management Services Department is responsible for the collection of the City's hotel occupancy taxes. Hotel/motel remittances are due on or before the 25th of each month. Payments received on this day cover the prior calendar month's activity, e.g., December collections are paid to the City on or before January 25th. Payments for hotel/motel taxes can be remitted to the City in one of three ways: (i) via electronic funds transfer made using the online hotel occupancy tax remittance site; (ii) by mail if paying by check (postmarked on or before the 25th to avoid penalties); or (iii) by in-person payment made in cash or by check. Because merchant processing fees reduce the amount of tax received by the City, credit and debit cards are not accepted.

Beginning on the 26th day of the month, an aging report is run to identify any delinquent hotels that have not timely remitted the tax due or filed the applicable report. These hotels are sent a manual delinquency notice in addition to the auto generated notice from the system. The aging report lists delinquencies in 30, 60, and 90 day windows.

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Written notices are also sent at 30 and 60 days. If there is no response to either of the written notices the hotels are then contacted by phone and or email. If (i) there has not been any communication through either of these efforts and (ii) the delinquency has reached the 90 day window, the hotel is then referred to the City's collection attorneys (Linebarger, Goggan Blair & Sampson, LLP) for contact and collection.

Internal Audit

The Internal Audit Department has employed various strategies to verify the accuracy of the information reported to the City by hotel/motel operators.

Through an electronic database, the Internal Audit staff assigns unique identifiers to each hotel listed on the State's website, and data related to each hotel on the State's website is then compared to hotel occupancy tax data on the City's mainframe on a quarterly basis.

This comparison helps to identify:

- Hotels listed on the State's website, but not within the City's mainframe, and vice versa;
- Hotels that have reported to the State but not to the City, and vice versa;
- Inaccurate calculations of hotel occupancy tax due, based on taxable hotel receipts captured within the City's mainframe;
- Patterns in variances between taxable revenue reported to the City and State. (NOTE: Since taxable revenue per State and City vary due to eligible exemptions, the program graphs the history of hotel occupancy revenue recorded by the City and State); and,
- Hotels that have missed one or more monthly payments to the City

The Internal Audit Department has a five-year audit plan during which five-to-six hotels/motels will be audited each year. Fiscal Year 2016 is the second year of the plan.

David Cooke
City Manager